

Appl. No. : 10/695,668
Filed : October 28, 2003

REMARKS

Claims 1-8 are rejected. By this Amendment, Claims 1 through 3 have been amended, and Applicants respectfully submit that Claims 1-8 are in condition for allowance. Additionally, Applicants have added dependent Claims 9 and 10. Applicants respectfully request the Examiner to reconsider the application in view of the following comments.

Response to the Rejections under 35 U.S.C. §103

The outstanding Office Action rejected Claims 1-8 under 35 U.S.C. §103 as obvious over U.S. Patent 6,450,984 to Lynch et al. in view of U.S. Patent No. 6,533,768 to Hill and U.S. Patent No. 5,324,306 to Makower et al. Claim 1 has been amended to further define the subject matter for which protection is sought and to expedite issuance. Specifically, Claim 1 has been amended to further define a kit that now recites, *inter alia*, “a cartridge holding at least one of the plural implants; and a single reloadable applicator configured to receive the cartridge to implant at least one of the implants in the eye.” Applicants respectfully submit that the recited structure is not disclosed or taught by the applied prior art.

The Office Action states that Lynch et al. does not disclose a kit having “either one inserter and a plurality of implants, or a plurality of inserters each with 1 implant,” and therefore the Examiner relied upon a combination with the other cited references to teach plural applicators with one implant, as well as a single applicator with plural implants. To support the obviousness of having plural implanters to insert multiple implants, the Office Action states that a physician would desire “to prevent possible infection between patients or even to prevent infection between two eyes of the same patient.” As opined by the Examiner, a physician would use either one implanter to hold multiple implants or multiple implanters with each holding a single implant rather than the claimed reloadable structure. Accordingly, Applicants respectfully submit that the reason for combining the references cited by the Examiner for using plural applicators to reduce infection teaches away from “a single reloadable applicator” with “a cartridge” as recited in amended Claim 1. Further, it would not be obvious for a physician to desire to reload a single implanter such as disclosed in Hill due to the inherent difficulties with manipulating a 400 micron long by 400 micron wide implant device.

Applicants respectfully submit that the applied art does not disclose or teach the recited structures and respectfully request indication of allowance of independent amended Claim 1.

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Likewise, the dependent Claims 2-10 are patentable for at least the same reasons that Claim 1 is patentable, and also for the unique combination of features that each claim recites. Accordingly, Applicant respectfully submit that the applied prior art do not render these dependent claims obvious, and also request withdrawal of the obviousness rejection of these claims.

No Disclaimers or Disavowals

Although the present communication may include alterations to the application or claims, or characterizations of claim scope or referenced art, Applicant is not conceding in this application that previously pending claims are not patentable over the cited references. Rather, any alterations or characterizations are being made to facilitate expeditious prosecution of this application. The Applicant reserves the right to pursue at a later date any previously pending or other broader or narrower claims that capture any subject matter supported by the present disclosure, including subject matter found to be specifically disclaimed herein or by any prior prosecution. Accordingly, reviewers of this or any parent, child or related prosecution history shall not reasonably infer that the Applicant has made any disclaimers or disavowals of any subject matter supported by the present application.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the rejections set forth in the outstanding Office Action are inapplicable to the present claims. Accordingly, early issuance of a Notice of Allowance is most earnestly solicited.

Any remarks in support of patentability of one claim should not be imputed to any other claim, even if similar terminology is used. Any remarks referring to only a portion of a claim should not be understood to base patentability on solely that portion; rather, patentability must rest on each claim taken as a whole. Applicants have not presented all arguments concerning whether the applied references can be properly combined in view of the clearly missing elements noted above, and Applicants reserve the right to later further contest whether a proper reason

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exists to combine these references and to present evidence supporting the non-obviousness of the claimed subject matter.

The undersigned has made a good faith effort to respond to all of the rejections in the case and to place the claims in condition for immediate allowance. Nevertheless, if any undeveloped issues remain or if any issues require clarification, the Examiner is respectfully requested to call Applicants' attorney in order to resolve such issue promptly.

Please charge any additional fees, including any fees for additional extension of time, or credit overpayment to Deposit Account No. 11 1410.

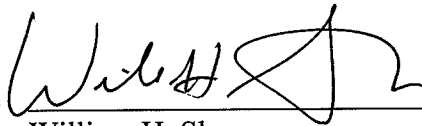
Respectfully submitted,

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Dated:

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